

## AMENDMENTS TO THE CLAIMS

This listing of claims will replace all prior versions, and listings, of claims in the application:

### In the claims

Claim 1 (currently amended):        A tissue approximating device comprising:  
first and second jaw members, said first and second jaw members being moveable toward and away from one another to define a plane of coaptation;  
a tissue engaging rod, said tissue engaging rod having a tissue engaging portion that can extend generally out of the plane of coaptation in a first position, said tissue engaging rod moveable a to a second tissue engaging position that transects the plane of coaptation thereby positioning tissue contacted by the tissue engaging rod between the first and second jaw members; and  
a fastening device provided on at least one of said first and second jaws and configured such that when said tissue engaging rod is deployed between said first and second jaw member, and said first jaw member is moved toward said second jaw member, the fastening device is deployed into the tissue positioned ~~therebetween~~ therebetween.

Claim 2 (previously presented):        The tissue approximating device of claim 1 wherein said fastening device comprises a rivet.

Claim 3 (previously presented):        The tissue approximating device according to claim 1 wherein said tissue engaging portion can extend generally parallel to said first and second jaw members, and wherein the tissue engaging portion is moveable from a first to second position.

Claim 4 (original):        The tissue approximating device of claim 3 wherein said tissue engaging rod is pivotally attached to said first and second jaw members.

Claims 5 and 6 (canceled)

Claim 7 (previously presented): A tissue approximating device comprising:  
first and second jaw members moveable toward one another, the moveability defining a plane of coaptation, said first and second jaw members having inner surfaces facing toward one another; and  
a tissue engaging rod, said tissue engaging rod having a tissue engaging portion that can extend generally out of the plane of coaptation in a first position, said tissue engaging rod moveable a to a second tissue engaging position that transects the plane of coaptation thereby positioning tissue contacted by the tissue engaging rod between the first and second jaw members.

Claim 8 (previously presented): The device of claim 23 wherein said first jaw member includes a lumen extending longitudinally through at least a portion of the first jaw member.

Claim 9 (original): The device of claim 8 wherein said at least one tooth member of said first jaw member includes a recessed passageway extending longitudinally of the tooth member and opening toward both proximal and distal ends of said first jaw member, said passageway being axially aligned with said lumen.

Claim 10 (canceled)

Claim 11 (previously presented): The tissue approximating device of claim 7 wherein said tissue engaging rod is pivotally attached to said first and second jaw members.

Claims 12-21 (canceled)

Claim 22 (currently amended): The device of Claim 7, further comprising a fastening device provided on at least one of said first and second jaws and configured such that when said tissue engaging rod is deployed between said first and second jaw member, and said first jaw member is moved toward said second jaw member, the fastening device is deployed into the tissue positioned therebetween therebetween.

Claim 23 (previously presented): The device of Claim 22, wherein the inner surfaces of the first and second jaw members comprise a tooth member and a reciprocal cavity member, respectively, such that when the inner surfaces of said first and second jaw surfaces are moved toward one another said at least one tooth member on said first jaw member is received at least partially within said at least one reciprocal cavity member of said second jaw member, and

wherein the fastening device is comprised at least in part by the tooth member and the reciprocal cavity member.

Claim 24 (new): A tissue approximating method comprising:  
moving a first jaw member toward a second jaw member in a plane of coaptation; and  
positioning tissue contacted by a tissue engaging rod between the first and second jaw members, wherein positioning tissue comprises moving a tissue engaging rod having a tissue engaging portion that can extend generally out of the plane of coaptation in a first position,  
said moving a tissue engaging rod comprising moving the tissue engaging rod to a second tissue engaging position that transects the plane of coaptation.

Claim 25 (new): The method of Claim 24, wherein said first jaw member includes a lumen extending longitudinally through at least a portion of the first jaw member.

Claim 26 (new): The method of Claim 24, further comprising pivotally moving said tissue engaging rod with respect to said first and second jaw members.